

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

PETER MCNEFF, an individual,

Case No.: 3:23-cv-00106-AMO

Plaintiff,

Complaint Filed: January 10, 2023

V.

JOINT CASE MANAGEMENT & [PROPOSED] ORDER

THE CITY OF PLEASANTON, a City within the State of California; THE PLEASANTON POLICE DEPARTMENT, a Division of defendant City; DAVID SING, an individual; LARRY COX, an individual; BRIAN DOLAN, an individual; and DOES 1-10, individuals.

Defendants.

The parties to the above-entitled action jointly submit this JOINT CASE
MANAGEMENT STATEMENT & PROPOSED ORDER pursuant to the Standing
Order for All Judges of the Northern District of California and Civil Local Rule 16-
9

1. JURISDICTION & SERVICE

Plaintiff's Statement on Jurisdiction: All defendants have been served. The basis for the Court's subject matter jurisdiction is pursuant to 28 U.S.C. §§ 1331 and 1333(3). This Court has supplemental jurisdiction over the related state law

1 claims pursuant to 28 U.S.C. § 1367.

2 **FACTS**

3 Plaintiff's Statement: On January 6, 2021, MR. MCNEFF attended a political
 4 rally, specifically a "Stop the Steal" rally, in Sacramento, California. He did so as a
 5 private citizen and during his personal time. He did not identify himself as a police
 6 officer at this political rally. Immediately following his attendance at this political
 7 rally, Defendant Cox labeled Plaintiff a racist, political extremist, and a radical
 8 supporter of violence, potentially criminal organizations. This defamatory and
 9 damaging label was shared with and adopted by Defendant Swing. Plaintiff was
 10 placed on leave and the Department, under the guidance of Swing. Swing retained
 11 an outside law firm to investigate the outrageous allegations put forth by Cox.
 12 Ultimately, the Department terminated Plaintiff for pretextual "violations of
 13 policy," all the while knowing the true reason was to remove an employee who
 14 would attend a political rally and express a political belief the Defendants deemed
 15 unpopular and even moronic. While Swing was impliedly named as the final
 16 decision maker, Dolan, acting on behalf of Defendant City, ratified this decision to
 17 terminate Plaintiff's employment on February 4, 2022.

18 Defendants' Statement: In January 2021, the City received information that
 19 Plaintiff attended the January 6, 2021, Stop the Steal Rally. An investigation
 20 revealed that Plaintiff did not attend the Stop the Steal Rally in Washington, D.C.,
 21 but attended a political rally in Sacramento, California. The investigation
 22 uncovered multiple violations of City policies, for which Plaintiff was
 23 terminated, effective February 4, 2022.

24 **LEGAL ISSUES**

25 Plaintiff's Statement: Plaintiff was punished (placed on leave), harassed,
 26 disparaged, and his character and reputation maligned by the Defendants
 27 immediately following his attendance at a constitutionally protected, lawful
 28 political rally. Defendants were acting to unlawfully purge the police department of

1 those with conservative political views that the superior ranking officers believed
 2 were moronic, even stupid. The entirety of the action taken against Plaintiff,
 3 beginning with placing him on administrative leave up to and including his
 4 termination, was motivated by and caused by the Defendants' unlawful purge of
 5 employees with these constitutionally protected, conservative political views. This
 6 action was taken to rid the Department of those with conservative political views
 7 like Plaintiff's and for no other reason. The retaliatory causes of action are not
 8 barred because Plaintiff's Department of Fair Housing and Employment ("DFEH")
 9 claim was timely and is excepted from the general requirements of the Tort Claims
 10 Act. *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 764.

11 Defendants' Statement: The Individual Defendants are not liable to the
 12 Plaintiff for any allegedly wrongful act and are entitled to qualified immunity.
 13 *Saucier v. Katz*, 533 U.S. 194, 201 (2001); *Monell v. Department of Social*
 14 *Services*, 436 U.S. 658, 694 (1978). Further, the City and Department are not liable
 15 for the retaliation causes of action because Plaintiff failed to comply with the
 16 California Government Claims Act. *Butler v. Los Angeles County*, 617 F.Supp.2d
 17 994, 1001 (2008); Cal. Gov't Code § 900, et seq. Plaintiff has not alleged claims
 18 under the Fair Employment and Housing Act; therefore, whether such claims are
 19 exempt from the Government Claims Act is immaterial. The City terminated
 20 Plaintiff's employment for legitimate, non-retaliatory reasons. His attendance at the
 21 Stop the Steal rally was not a substantial or motivating factor in the City's decision
 22 to terminate his employment; the City had an adequate justification for treating the
 23 Plaintiff – a police officer, sworn to protect equally citizens of all races and
 24 religious beliefs – differently from members of the general public; and the City
 25 would have terminated his employment even absent his attendance at the rally.

26 **4. MOTIONS**

27 Plaintiff's Statement: Plaintiff anticipates filing discovery motions as needed,
 28 motions in limine, and any other viable motion that may arise during the course of

1 litigation.

2 Defendants' Statement: Defendants' motion to dismiss is currently pending
 3 and the parties agree the hearing date of June 22, 2023 may be moved to July 20,
 4 2023. Defendants anticipate filing a motion for summary judgment, motions in
 5 limine, and discovery motions (as needed).

6 **5. AMENDMENT OF PLEADINGS**

7 Plaintiff's Statement: Depending on the outcome of the pending Motion to
 8 Dismiss filed by Defendants, Plaintiff may seek to amend the complaint.

9 Defendants' Statement: Defendants have not yet filed an Answer, but do not
 10 anticipate adding or dismissing any defenses, or filing any counterclaims.

11 Joint Proposed Deadline for Amending Pleadings: 60 days after the Court's
 12 ruling on Defendants' pending Motion to Dismiss.

13 **6. EVIDENCE PRESERVATION**

14 Joint Statement: The parties have reviewed the ESI Guidelines and met and
 15 conferred.

16 **7. DISCLOSURES**

17 Plaintiff's statement: Plaintiff's counsel will be out of the state from June 21
 18 to June 29 and July 5 to July 19.

19 Joint Statement: Initial disclosures have not yet been made. The parties
 20 agree that initial disclosures shall be made no later than August 4, 2023.

21 **8. DISCOVERY**

22 Plaintiff's Statement: Plaintiff anticipates taking depositions of percipient
 23 witnesses and conducting written discovery. Expert discovery may be needed
 24 depending on the course of litigation.

25 Defendants' Statement: Defendants anticipate taking Plaintiff's deposition,
 26 conducting written discovery by means of requests for production, requests for
 27 admission, and interrogatories. Defendants' may take other depositions upon
 28 learning of additional witnesses from initial disclosures. Defendants anticipate

1 expert discovery may be needed on the issue of lost wages and Plaintiff's alleged
 2 emotional distress.

3 No additional issues have been identified, nor were any changes needed to
 4 discovery under the Federal Rules of Civil Procedure. Defendants do not anticipate
 5 extensive discovery of Electronically Stored Information (ESI); however, to the
 6 extent there is any relevant ESI, both parties agree to the preservation of ESI.
 7 Defendants do not believe that privileged documents or information will be at issue
 8 in this case. Defendants do not anticipate that limitations on discovery are necessary
 9 at this time.

10 **9. CLASS ACTIONS**

11 Joint Statement: Not applicable.

12 **10. RELATED CASES**

13 Joint Statement: Plaintiff's appeal of his termination is pending before an
 14 arbitrator and the parties are awaiting the decision. The parties are not aware of any
 15 other related cases.

16 **11. RELIEF**

17 Plaintiff's Statement of Damages: Plaintiff is seeking compensatory,
 18 economic, noneconomic, consequential, general, special, exemplary and punitive
 19 damages according to proof, and believes the amount will exceed \$1 million.

20 **12. SETTLEMENT AND ADR**

21 Plaintiff's Statement: Plaintiff is amenable to Court Mediation and/or a
 22 Settlement Conference with a Magistrate Judge no later than January 31, 2024. At
 23 this time Plaintiff will not consent to private mediation.

24 Defendants' Statement: Defendants will participate in Court Mediation
 25 and/or a Settlement Conference with a Magistrate Judge no earlier than January 1,
 26 2024. Defendants are amenable to private mediation as well.

27 **13. OTHER REFERENCES**

28 Joint Statement: The parties do not believe that this case is suitable for

1 binding arbitration, a special master, or the Judicial Panel on Multidistrict
2 Litigation.

3 **14. NARROWING OF ISSUES**

4 Plaintiff's Statement: Plaintiff believes claims and issues will need to be
5 narrowed by motion.

6 Defendants' Statement: Defendants believe that a number of the claims and
7 issues can be narrowed by motions.

8 **15. EXPEDITED TRIAL PROCEDURE**

9 Joint Statement: This is not the type of case that can be handled under the
10 Expedited Trial Procedure.

11 **16. SCHEDULING**

12 Discovery Cutoff: March 22, 2024

13 Designation of Experts: May 24, 2024

14 Last Day to Hear Dispositive Motions: May 3, 2024

15 Pretrial Conference: July 19, 2024

16 Trial : September 16, 2024

17 **17. TRIAL**

18 Joint Statement: Plaintiff requests a jury trial. The parties estimate that a jury
19 trial will take approximately 5-7 days.

20 **18. DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR**
21 **PERSONS**

22 Plaintiff's Statement: Plaintiff has filed the Certificate of Interested Entities
23 or Persons.

24 Defendants' Statement: The Individual Defendants, who were sued in their
25 individual capacities, have filed the necessary disclosures with the Court.

26 **19. PROFESSIONAL CONDUCT**

27 Joint Statement: The parties' counsel have reviewed the Guidelines for
28 Professional Conduct for the Northern District of California.

1 **20. OTHER**

2 Joint Statement: The parties are no aware of other issues at this time.

4 Dated: May 31, 2023

/S/ Karren Kenney

Karren Kenney
Counsel for Plaintiff
PETER MCNEFF

7 Dated: May 31, 2023

/S/ Nicholas M. Grether

Jesse J. Maddox
Nicholas M. Grether
Counsel for Defendants
THE CITY OF PLEASANTON,
THE PLEASANTON POLICE
DEPARTMENT, DAVID SING,
LARRY COX, and BRIAN DOLAN

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CASE MANAGEMENT ORDER

The above JOINT CASE MANAGEMENT STATEMENT & PROPOSED ORDER is approved as the Case Management Order for this case and all parties shall comply with its provisions. [In addition, the Court makes the further orders stated below:]

IT IS SO ORDERED.

Dated: _____, 2023

Hon. Araceli Martínez-Olguín

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On May 15, 2023, I served the foregoing document(s) described as **JOINT CASE MANAGEMENT & [PROPOSED] ORDER** in the manner checked below on all interested parties in this action addressed as follows:

Karren Kenney
Kenney Legal Defense
2900 Bristol Street, Suite C204
Costa Mesa, CA 92626
karen@kenneylegaldefense.us

(BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Liebert Cassidy Whitmore's electronic mail system from ltokubo@lcwlegal.com to the email address(es) set forth above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

Executed on **May 15, 2023**, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

/s/ Linda Tokubo
Linda Tokubo